

District Judge Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

G.S.,

Petitioner,

v.

LAURA HERMOSILLO,¹ *et. al.*,

Respondents.

No. 2:25-cv-01255-JNW

RESPONSE TO PETITIONER'S
MOTION FOR EAJA FEES AND COSTS

Noted for: March 5, 2026

INTRODUCTION

Respondents oppose Petitioner's motion for an award of \$14,340.07 in attorney's fees and expenses under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. No. 43, Motion for Attorney Fees and Costs Under EAJA ("Motion" or "Mot."). The Court should deny the Motion because Respondents' positions were substantially justified.

BACKGROUND

On June 24, 2025, U.S. Immigration and Customs Enforcement ("ICE") re-detained Petitioner G.S., a noncitizen in removal proceedings, after he had previously been released on his own recognizance. He commenced this habeas litigation the same day arguing that his

¹ Pursuant to Federal Rule Civil Procedure 25(d), Respondents substitute Laura Hermosillo for Drew Bostock.

1 detention was unlawful. The Tacoma Immigration Court held two bond hearings in July and
2 August. At both hearings, the immigration judge found that the court did not have jurisdiction
3 to redetermine Petitioner's custody status as Petitioner was detained pursuant to 8 U.S.C.
4 § 1225(b).
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6 On August 7, 2025, Respondents filed a motion to dismiss and return arguing that (1) an
7 immigration judge had determined that Petitioner was subject to Section 1225(b) mandatory
8 detention, and (2) Petitioner had failed to exhaust his administrative remedies by appealing the
9 custody orders to the Board of Immigration Appeals ("BIA"). Dkt. No. 24. The motion was
10 fully briefed on September 11, 2025. Dkt. No. 34.
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12 On September 4, 2025, Petitioner filed a motion for a temporary restraining order
13 ("TRO") seeking his release from immigration custody and an order requiring his immigration
14 case to be transferred to the Portland Immigration Court. Dkt. No. 28. Respondents did not
15 oppose the motion, and the Court granted the TRO. Dkt. No. 30. Thereafter, ICE released
16 Petitioner, and his removal proceedings were transferred to Portland Immigration Court. Dkt.
17 No. 34.
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19 ARGUMENT

20 To qualify for attorneys' fees under EAJA, the plaintiff must demonstrate that he is a
21 prevailing party. 28 U.S.C. § 2412(d)(1)(A). To be a prevailing party, "a party must successfully
22 obtain a judicially sanctioned material alteration of his or her legal relationship with the United
23 States." *Pabla v. U.S. Citizenship & Immig. Servs.*, No. 2:18-cv-1660, 2019 WL 1436872, at *2
24 (W.D. Wash. Apr. 1, 2019) (collecting cases). Respondents do not dispute that Petitioner is the
25 prevailing party in this case.
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1 A prevailing party, however, is not entitled to an award of EAJA fees if the government
2 shows that its position in the underlying litigation “was substantially justified.” *See* 28 U.S.C. §
3 2412(d)(1)(A). Although EAJA creates a presumption that fees will be awarded to a prevailing
4 party, Congress did not intend fee shifting to be mandatory. *Flores v. Shalala*, 49 F.3d 562, 567
5 (9th Cir. 1995); *Zapon v. United States Dep’t of Justice*, 53 F.3d 283, 284 (9th Cir. 1995). Rather,
6 the Supreme Court has interpreted the term “substantially justified” to mean that a prevailing
7 party is not entitled to recover fees if the government’s position is “justified to a degree that could
8 satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 566 (1992). The decision to
9 deny EAJA attorney’s fees is within the discretion of the court. *Lewis v. Barnhart*, 281 F.3d
10 1081, 1083 (9th Cir. 2002).

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13 The government has the burden of proving its positions were substantially justified. *See*
14 *Hardisty v. Astrue*, 592 F.3d 1072, 1076 n.2 (9th Cir. 2010). It must demonstrate that its position
15 had a reasonable basis in both law and fact. *Flores*, 49 F.3d at 569-70; *see also Thangaraja v.*
16 *Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005) (noting that “‘substantial justification is equated
17 with reasonableness . . . The government’s position is substantially justified if it has a reasonable
18 basis in law and fact.’” (quoting *Ramon-Sepulveda v. INS*, 863 F.2d 1458, 1459 (9th Cir. 1988)
19 (alteration in original)). The Ninth Circuit has recognized that “[t]o establish substantial
20 justification, the government need *not* establish that it was correct or ‘justified to a high
21 degree’ . . . but only that its position is one that a ‘reasonable person could think it correct.’”
22 *Ibrahim v. U.S. Homeland Security*, 912 F.3d 1147, 1167-68 (9th Cir. 2019) (*en banc*) (emphasis
23 added) (quoting *Pierce*, 487 U.S. at 566 n.2). A court’s finding that an agency decision was
24 unsupported by substantial evidence is, however, “a strong indication” that the position of the
25 United States in the litigation was not substantially justified. *Thangaraja*, 428 F.3d at 874.
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1 Here, Respondents were substantially justified in arguing that Petitioner was subject to
2 mandatory detention and that he had failed to exhaust his administrative remedies. As explained
3 more thoroughly in Respondents' Motion to Dismiss (Dkt. 24, at 2-5, 6-7), Petitioner was subject
4 to mandatory detention as an immigration judge had found that he was subject to mandatory
5 detention under Section 1225(b). The best reading of the statute is that Congress insured that all
6 noncitizens would be inspected by immigration authorities by treating noncitizens who are
7 present in the United States without having been inspected and admitted as applicants for
8 admission. Noncitizens who are present without having been inspected and admitted have the
9 benefit of full removal proceedings and are not subject to expedited removal. But they are subject
10 to detention during their removal proceedings.
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13 At the time of Petitioner's detention, the government's position concerning the scope of
14 Section 1225(b) mandatory detention was just starting to be litigated throughout the country. *See*
15 Motion, at 4-5 (citing decisions from July, August, and September 2025). In class action
16 litigation specific to detention practices at the Tacoma Immigration Court, dispositive motions
17 were pending in a court in this District when ICE detained Petitioner, at the time of the
18 immigration judge's subsequent bond rulings, and while the parties briefed Respondents' motion
19 in this case. *See Rodriguez Vazquez v. Hermosillo*, No. 3:25-cv-05240-TMC, Dkts. 41, 49.
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21 After Respondents filed their motion to dismiss, on September 5, 2025, the BIA issued a
22 decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (2025),² adopting the government's
23 interpretation of § 1225(b)(2). On September 30, 2025, the Rodriguez Vasquez court held that
24 the government's interpretation of Section 1225(b)(2) violated the INA and that class members
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27 ² *Hurtado* was recently vacated by *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM, 2026 WL 468284
28 (C.D. Cal. Feb. 18, 2025).

1 had been unlawfully subjected to mandatory detention. *Rodriguez Vasquez v. Bostock*, 802 F.
2 Supp. 3d 1297, 1336 (W.D. Wash. Sept. 30, 2025). The same day, Petitioner filed a notice of
3 supplemental authority citing the *Rodriguez Vasquez* decision. Dkt. No. 35. Based on the
4 procedural posture of this case, this Court should find that the government had a “reasonable
5 basis both in law and fact” to argue that Petitioner’s detention was mandatory pursuant to Section
6 1225(b).
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8 Furthermore, Respondents’ argument that Petitioner had failed to exhaust his
9 administrative remedies by appealing the immigration judge’s custody orders was substantially
10 justified. Dkt. No. 24, 7-8. Petitioner argued that any appeal to the BIA would be futile
11 considering *Matter of Yajure Hurtado*. R&R, at 12. Although the Court adopted the R&R’s
12 position agreeing with Petitioner’s argument, Respondents’ exhaustion argument was still
13 substantially justified. The R&R’s recommendation was heavily based on the binding effect of
14 *Hurtado* on immigration judges. *Id.* However, the BIA issued *Hurtado* after Respondents filed
15 their motion to dismiss. In contrast, courts generally “require, as a prudential matter, that habeas
16 petitioners exhaust available judicial and administrative remedies before seeking [such] relief.”
17 *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by
18 *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). Therefore, the government’s position that
19 Petitioner failed to exhaust his administrative remedies was substantially justified.
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CONCLUSION

The Court should deny Petitioner's motion for attorney's fees and costs, as Respondents' positions were substantially justified.

DATED this 25th day of February, 2026.

Respectfully submitted,

/s Michelle R. Lambert
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I certify that this memorandum contains 1,249 words, in compliance with the Local Civil Rules.